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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSOCIATED PRESS,	05 Civ. 5468 (JSR)
Plaintiff,	**ECF Case**
v.	DECLARATION OF CHARLES D. STIMSON
DEPARTMENT OF DEFENSE,	
Defendant.	

I, Charles D. Stimson, pursuant to 28 U.S.C. § 1746, hereby declare and say as follows:

1. I am the Deputy Assistant Secretary of Defense for Detainee Affairs in the Department of Defense (DoD). My office is organized under the office of the Under Secretary of Defense for Policy. The Office of Detainee Affairs, which I supervise, is responsible for providing policy advice to the Under Secretary of Defense on matters regarding detainees in DoD control. I have served in this position since January 23, 2006. Unless otherwise indicated, the statements made in this declaration are based upon my personal knowledge.

2. My responsibilities include oversight of the review of Detainee Affairs information for classification purposes as mandated by Executive Order (EO) 12958, as amended. The Principal

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Deputy Under Secretary of Defense for Policy has been designated by the Under Secretary of Defense for Policy (OUSD) as an Original SECRET Classification Authority and declassification authority pursuant to EO 12958, as amended, Sections 1.3 and 3.1. Through my position, I am aware of the substantive requirements within my organization for classifying documents pursuant to this authority. I am familiar with the requirements for classification of information under EO 12958, as amended. In my present position, I am responsible for matters relating to individuals detained by the Department of Defense and I read, review and draft classified documents concerning this subject on a daily basis. Based on this experience and information available to me in my official capacity, I am aware of the classification requirements for documents within my area of responsibility.

Purposes of this Declaration

3. This declaration describes the creation and current classification of certain documents created by the Office of Detainee Affairs. It further explains the rationale for withholding portions of these documents from public release under the Freedom of Information Act (FOIA).

Documents Created by the Office of Detainee Affairs for the Pre-Administrative Review Board Review Process

4. It is my understanding that the Associated Press has filed a Freedom of Information Act request for "details and explanations of the decisions made to release or transfer detainees [from Guantanamo], including the reason why the decision was made." Although I was not employed by the DoD prior to the creation of the Administrative Review Board (ARB) process in June 2004, I am aware that there was a detainee assessment process in place before the ARB process was implemented. In that pre-ARB review process, the Department of Defense assessed Guantanamo detainees for potential release or transfer through an interagency process managed by my office. (At that time, the Office of Special Operations/Low Intensity Conflict (SO/LIC),

our predecessor organization, was responsible for this process). In the course of my official duties, I have become familiar with the details about that process as described in this declaration.

5. As part of this pre-ARB review process, Joint Task Force-GTMO (JTF-GTMO) provided my office with an intelligence assessment of the detainee and a recommendation regarding his disposition through US Southern Command (USSOUTHCOM). The Criminal Investigation Task Force (CITF) provided my office with a law enforcement assessment of the detainee and a recommendation regarding the detainee's disposition. My office also consulted with other components of the Department of Defense, as well as other agencies of the United States government, including the Central Intelligence Agency and the Departments of State, Justice and Homeland Security.

6. Using this information, an action memorandum was prepared by my office for review by the Deputy Secretary of Defense, making a formal recommendation for his consideration. This memorandum contained a summary of the various organizations' opinions and recommendations regarding the disposition of the detainee, and indicated where those recommendations varied from the recommendation of my office. Some of these action memoranda could also contain a summary of the detainee's background and the intelligence value or law enforcement status of the detainee. In most cases, the action memorandum discussed more than one detainee. The decision regarding whether to release or to transfer a detainee was made by the Deputy Secretary of Defense.

7. The JTF-GTMO/USSOUTHCOM and CITF assessment memoranda for each detainee were attached to the action memorandum when it was forwarded to the Deputy Secretary of Defense for his decision. In many cases, my office also attached a one page "worksheet" that

summarized some of the pertinent information regarding the detainee's background and the recommendations of various organizations.

Withholdings Taken in the Sample Transfer Documents

8. Exhibit 1 to this Declaration is a redacted sample of an action memorandum that contains information typically found in this type of document. The information that has been withheld in this document falls into four categories:

a. The specific disposition recommendations of various DoD components and interagency organizations. *See* paragraph 10a below for the justification for this withholding. In some instances, this includes a specific recommendation provided by the DoD Office of General Counsel (OGC). *See* paragraph 10b below for the justification for this withholding.

b. Names, initials or phone numbers of Department of Defense personnel. This information is withheld under FOIA Exemption (b)(6). It is my understanding that the Associated Press is not contesting these withholdings.

c. Handwritten direction from the Deputy Secretary of Defense regarding interactions with the home government of these detainees based on information and recommendations he received from OGC. *See* paragraph 11 below for the justification for this withholding.

d. Information derived from the accompanying USSOUTHCOM memorandum about the detainee. *See* Declaration of Rear Admiral Harris and the classified Declaration of Dr. Stephen Cambone for the justification for those withholdings.

9. Exhibit 2 to this Declaration is a redacted sample of a detainee worksheet prepared by the Office of Detainee Affairs. This sample contains information typically found in these types of documents.

a. Some of the withholdings from the worksheet are the same as those found in the sample action memorandum, specifically, this document contains some of the various disposition recommendations described in paragraph 8a, above.

b. The worksheet also contains a summary of factual and analytical information about the detainee, transcribed from the USSOUTHCOM and CITF memoranda. *See* Declarations of Rear Admiral Harris and Colonel David Smith for the justification for these withholdings.

c. The worksheet also contains a photograph of the detainee. The justification for the withholding of the photograph is set forth in the Declarations of Paul B. Rester, Director of the Joint Intelligence Group at Joint Task Force Guantanamo, and Richard B. Jackson, Chief of the Law of War Branch of the Office of The Judge Advocate General of the Army, submitted in AP v. DOD, 06 Civ. 1939 (JSR).

10. **Withholding of disposition recommendations.**

a. When the disposition recommendations of the Department of Defense components and the interagency organizations are listed and discussed, they are withheld under Exemption (b)(5). I have determined that these recommendations should be withheld under Exemption (b)(5) because they involve the deliberative process regarding detainee transfers and releases. To publicly release this information would discourage open and frank discussions between these organizations and components and the Deputy Secretary of Defense. These intra- and inter-agency recommendations were provided to the Deputy Secretary of Defense to aid him in his decision regarding the detainees' disposition. If these recommendations were to be made public through the Freedom of Information Act, it would limit candid discussions and recommendations concerning, among other things, Detainee Affairs' efforts to transfer and repatriate detainees, and would have a chilling effect on the organizations that are part of the detainee review process.

My office, as well as other organizations within the Department of Defense and other U.S. government agencies, must be able to engage in open, frank discussions on matters of policy and practice, both internally and with each other, as reflected by the contents of these documents. Release of this information would seriously erode the free exchange of information within and between Detainee Affairs, the Office of the Secretary of Defense (OSD) Policy and other United States Government agencies who are working closely in detention operations.

b. For several detainees, this action memorandum discusses the detainees' potential involvement in the criminal prosecutions of other detainees by military commission. The memorandum provides specific comments from OGC. In addition to being withheld for the reasons provided in paragraph 10a above, this information is withheld under Exemption (b)(5) because it is protected by the attorney-client privilege and the attorney work product doctrine. Here, OGC (the attorney) is providing specific advice to the DoD (the client) regarding its evaluation of the detainees' role in future military commission proceedings and is recommending a specific disposition of the detainees based on that potential role. In this circumstance, OGC is providing professional advice to the Office of Detainee Affairs and the Deputy Secretary of Defense regarding an ongoing legal matter. It is critical that attorneys in OGC be able to fully inform their clients about such matters and discuss legal strategy in a confidential manner. Publicly releasing this advice and attorney work product under the Freedom of Information Act would, for the reasons noted in paragraph 10a above, limit candid discussions and recommendations concerning such issues and would have a chilling effect on OGC.

11. This document also contains information not typically found in action memoranda of this type. Specifically, the document contains a handwritten note by the Deputy Secretary of

Defense regarding potential future discussions with the government of the country of origin of these detainees, based on information provided by OGC.

a. At the time of the AP's FOIA request, this information was classified at the SECRET level. This information is withheld from release under FOIA Exemption (b)(1), which exempts from release under FOIA matters that "are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and … [that] are in fact properly classified pursuant to such Executive order." Section 1.4(d) of EO 12958, as amended, permits the classification of information because it concerns foreign relations or foreign activities of the United States. I have determined that the release of this information about the United States' discussions with a foreign government regarding specific detainees is properly classified and that its release reasonably could be expected to cause serious damage to the national security and foreign relations because it would reveal highly sensitive information about discussions between the United States and the foreign government. It is crucial that the United States be able to treat its dealings with foreign governments with discretion and we do not unilaterally make public the results of those dealings, in order to avoid the chilling effect of making such discussions public and the possible damage to our ability to conduct foreign relations. If the United States government is required unilaterally to publicly disclose its communications with a foreign government relating to the disposition of particular detainees, that government, as well as other governments, would likely be reluctant in the future to communicate frankly and fully with the United States concerning such issues. This would seriously undermine and impair our ability to transfer or release detainees to their home governments and may adversely impact those nations' cooperation in this and other aspects of the Global War on Terrorism. Accordingly, release of the Deputy Secretary of Defense's notation concerning potential discussions about specific detainees with their country of origin could reasonably be expected to cause serious harm to both national security and foreign relations.

b. This information is also withheld under the attorney-client privilege and work product doctrine and FOIA Exemption (b)(5) because this note is written in response to the recommendations and comments made by OGC about certain detainees and their involvement in military commission cases. As such, it is both an attorney-client communication and work-product, the confidentiality of which must be maintained for the reasons stated in paragraph 10b above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of August, 2006.

Charles D. Stimson